IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7481 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HANSABEN KHEMCHAND JAIN

Versus

GPSC

Appearance:

MR MB GANDHI for Petitioner

MR DN PATEL for Respondent No. 1

Messrs Patel Advocates for respondent no.2.

Mr.Digant P. Joshi, AGP for M/s Patel Advocates.

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 04/05/2000

ORAL JUDGEMENT

#. The present petition is filed by the petitioner for the relief that this court shall hold and declare that

select list published on 8.9.99 of 57 candidates is erroneous, illegal, contrary to law and Constitution of India and therefore the same be quashed and set aside and in the alternative it is prayed that 10 posts of Assistant Public Prosecutor which are not filled in should be filled in from the lady candidates and the representation to the present petitioner be given in the same.

#. The present petition is filed by the petitioner who has passed her 3rd LL.B Exams in the year 1985 and after obtaining "Sanad" in December, 1985 the petitioner started practising as an advocate on Criminal and Civil Side. The case of the petitioner is that on 1.12.1997 an advertisement was issued by the G.P.S.C. for recruitment of Assistant Public Prosecutor. The advertisement bearing No.103 stated that in all there are 67 vacancies of which 34 posts are unreserved and remaining 5 posts for Scheduled Caste, 10 posts for Scheduled Tribe and 18 posts for SEBC of origin of Gujarat are reserved. The advertisement further stated that of all these posts 10 posts of unreserved category, 1 posts for Scheduled Caste Category, 3 posts for Scheduled Tribe Category and 5 posts of SEBC Category are reserved for female candidate.

#. The petitioner submitted that the petitioner appeared in the Written Test held on 16.5.1998 and as the petitioner was successful in the said written test, the petitioner appeared in the oral interview on 5.8.1999. It is the case of the petitioner that on 8.9.1999 the GPSC published a select list of 57 candidates in which name of the petitioner did not find place and therefore the present petition is filed. The petitioner challenge the action of respondent GPSC mainly on the ground that in response to the aforesaid advertisement 1900 to 2000 candidates had applied for and all were called for the written test and out of that written test 222 candidates were declared passed of which 200 candidates were male and 22 candidates were female. It is the case of the petitioner that the respondent G.P.S.C. has prepared a list of only 57 candidates and in that list no female candidate is selected. The case of the petitioner is that out of 67 posts though 19 posts were reserved for ladies and no female candidates is selected. The petitioner has submitted that, " it is unfortunate that the written test's result is not declared and the successful candidates are not arranged in the seriatim to their marks and, therefore, it is difficult to know as to how many marks are secured by individual candidate but, the G.P.S.C. is having all the details of the same but, the same is never parted with to the candidate

concerned." This seems to be one of the reasons that at one stage the court asked the respondent G.P.S.C. to make available the marks obtained by the petitioner. The petitioner has also stated that " if this result is published or brought before this Hon'ble Court, then certainly, the present petitioner would stand in first 10 in the merits so far as the written test is concerned and when the written test is performed so well, question of any disappointment or unsuccessful in the oral interview is out of question and as aforesaid, the petitioner had performed very well at the time of oral interview."

#. The petitioner has based her challenge mainly on the ground that out of 22 female candidates, who were called for the interview not a single lady could succeed is absolutely unbelievable". The petitioner has also placed a heavy reliance on one previous incident of the selection of the Labour Judges, the details of which are set out in para 18 of the petition. It is the case of the petitioner that after this court quashed and set aside the selection of the Labour Judges a fresh selection was held in the presence of the Hon'ble Judge of this Court, in a list of 25 candidates not less than 7 candidates were lady candidates. Beside these two grounds for challenge another ground for challenge is that when 67 posts were advertised there was no reason for the G.P.S.C. to prepare a select list of 57 candidates only and it is also stated in para 13 of the petition that there are more than 150 vacant posts of Assistant Public Prosecutor and that as per the knowledge of the petitioner and the information available to the petitioner, the State Government has already sent requisition to the G.P.S.C. to fill up 50 posts reserved and for unreserved of the Assistant Public Prosecutor.

#. None of the aforesaid ground of challenge has any substance. An affidavit in reply is filed by Smt. S.P.Patel, Dy.Secretary, G.P.S.C. and it is set out in para 4 of that affidavit in reply that an advertisement is produced at Annexure-I page 48, wherein it is clearly stated that in advertisement prescribed condition no.5 that "in case of non availability of woman candidates in respective categories, the posts so reserved will be allotted to male candidates belonging to the same category". It is also stated in note 1 that "if necessary the commission may held elimination test so as to decide who should be called for personal interview and the medium of elimination test will be in Gujarati unless otherwise decided by the commission."

#. It is further stated in affidavit in reply that, " I

say and submit that in the aforesaid advertisement it was referred to that if necessary elimination test will be taken up for selecting candidate for viva-voce test. I say and submit that purpose of taking viva-voce test is to restrict the total numbers of candidates for viva-voce test. The marks of the elimination test will not be taken into consideration for preparing final selection list. This was also made clearer to all the candidates who were invited for elimination test in their "Admission letter to the elimination test" (emphasis supplied).

#. In the said affidavit in reply a brake up is given in para 5 showing the details of the male and female candidates who were called for viva-voce test after the elimination test. In general category total 102 candidates were called of which 91 were male and 11 were female in Scheduled Caste 30 candidates were called for interview of which 27 were male candidates and 3 were female candidates and in Scheduled Tribe category 15 candidates were called, of which 15 were male and there was no female candidate similarly in SEBC category 75 candidates were called and all of them were male. It is also stated in para 6 of the affidavit in reply that out of 14 female candidates who were called for viva-voce only 13 candidates had remained present of which 10 were from general category and 3 were from Scheduled Caste. The petitioner Hansaben Khemchand Jain was also one of the candidates who remained present for viva-voce. Para 7 of the affidavit in reply points out that commission selected only 57 candidates and recommended their names for appointment by letter dtd.17.9.1999 and 10 posts were kept vacant on account of non availability of suitable candidates belonging to Scheduled Tribe category. Thereafter, para 8 of the affidavit in reply sets out the details of the constitution of Selection Committee wherein it is stated that, " It is absolutely baseless allegation against the selection committee constituted by the Gujarat Public Service Commission that they had decided not to make any appointment from lady candidates as narrated hereinabove, few members were from judiciary and retired Principal of Law College Selection committee had no personal grudge against any of the candidate much less for female candidate."

#. Thus, it is clear that the grounds of challenge to the selection to the post of Assistant Public Prosecutor has no basis in as much as the petitioner is not able to show that the selection was contrary to any rules. The petitioner is not able to point out any such rule to which the selection can be said to be in violation of. The learned advocate for the petitioner points out that

selection to the post of Assistant Public Prosecutor is governed under the provision of Section 25 of Cr.P.C. Relevant portion of Sec.25 reads as under :-

"Sec.25:- Assistant Public Prosecutors:- (1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates."

#. The learned advocate for the petitioner placed reliance upon a judgment of the Hon'ble the Supreme Court in the matter of Shri Durgacharam Misra, Vs. state of Orissa and others, reported in AIR 1987 Supreme Court page 2267. In that case the appointment to the post of Munsifs under Rule 16, 17 and 18 of Orissa Judicial Service Rules (1964), was under challenge. In that case written and viva-voce test was prescribed and no minimum qualifying marks were prescribed for viva voce test. The Public Service Commission however prescribed minimum qualifying marks in viva-voce test and excluded the candidates who did not secure the marks so prescribed. The same was held to be illegal. The learned advocate for the petitioner invited the attention of the court to para 14, which read as under :-

14. We are not persuaded by this argument. That does not mean that we are doubting the purpose of rule 17. The purpose is undoubtedly laudable and indeed, it is in accordance with the observations of this Court in Ashok Kumar Yadav and Ors. etc. etc. v. State of Haryana and Ors etc. etc., [19851 Supp. 1 SCR 657. There it was observed:-

"It is therefore essential that when selections to the Judicial Service are being made, a sitting Judge of the High Court to be nominated by the Chief Justice of the State should be invited to participate in the interview as an expert and since such sitting Judge comes as an expert who, by reason of the fact that he is a sitting High Court Judge knows the quality and character of the candidates appearing for the interview, the advice given by him should ordinarily be accepted, unless there are strong and cogent reasons for not accepting such advice and such strong and cogent reasons must be recorded in writing by the Chairman and members of the Public Service Commission."

##. The learned advocate also invited the attention to para 15 which reads as under :-

15. But the crux of the matter is whether the Judge present at the viva-voce test has the power to add anything to the Rules of recruitment. He may advice the Commission as to the special qualities required for judicial appointments. His advice may be in regard to the range of subjects in respect of which the viva-voce shall be conducted. It may also cover the type and standard of questions to be put to candidates; or the acceptance of the answers given thereof. But his advice cannot run counter to the statutory Rules.

The aforesaid judgment of the Hon"ble Supreme Court has no application to the facts of the present case in as much as there are no rules which prescribe for a written test and there is nothing wrong in selecting the candidates on the basis of question of viva-voce test only and further the G.P.S.C. has not prescribed the minimum qualifying marks which can be said to be contrary to any rules and therefore the said judgment is not of any help to the petitioner.

##. The learned advocate Mr.D.N. Patel, appearing for the GPSC has placed a copy of letter dtd.3.3.2000, wherein it is stated that minimum qualifying marks out of 100 for candidate belonging to unreserved category was prescribed to be 40 while the present petitioner had secured only 30 marks. Thus, it is clear that the selection to the post of Assistant Public Prosecutor was based only on personal interview and the written test which is referred to by the petitioner was only an elimination test and as set out in the affidavit, the said elimination test had no significance in as much as the same was only with a view to restrict the number of the candidate to be called for viva-voce test. It is specifically mentioned in para 4 of the affidavit in reply that, " the marks of elimination test will not be taken into consideration for preparing final sele list. This was also made clear to all the candidates who were invited for elimination test, in their admission letter to the elimination test." (emphasis supplied)

##. Affidavit in rejoinder is also filed but in that also no ground is made out in addition to what is stated in the petition. The petitioner has not pointed out any rules, contrary to which the GPSC can be said to have acted. In that view of the matter the petition fails. No relief as prayed for can be granted. Rule is discharged with no order as to costs.

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